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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1514

GEORGIA-PACIFIC CORPORATION,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Claims

PETITIONER'S REPLY TO MEMORANDUM FOR RESPONDENT IN OPPOSITION

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WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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Petitioner, Georgia-Pacific Corporation, hereby replies to the memorandum in opposition submitted on behalf of respondent, the United States of America.

1. Respondent's characterization of the decision of the Court of Claims as one merely "staying the proceedings" is unfounded and misleading.[1] By this miscasting, of course, respondent seeks to inject the concept of "abuse of discretion" into the reviewing process, thereby confusing

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[1] Respondent's Memorandum, at 6-9.

the real issue before this Court. In the decision below, the United States Court of Claims has made a final determination that a federal district court has jurisdiction to entertain Tucker Act inverse condemnation claims against the United States in excess of $10,000. Pursuant to and in reliance on that final determination, the Court of Claims then suspended further proceedings before it and referred (or transferred) petitioner to the federal district court for resolution of its inverse condemnation claim. It is the jurisdictional decision of the court which petititioner brings here for review, not the propriety of, or standards by which to judge, a stay of proceedings. The resultant posture of the subject litigation (suspension of proceedings in the Court of Claims) is based solely upon that final determination as to federal district court jurisdiction. In fact, this important jurisdictional determination is the necessary prerequisite for any stay of proceedings.

In determining whether to review the decision below, considerations of abuse of discretion simply are not applicable. Rather, statutory interpretation, the will of Congress, and basic principles of federal court jurisdiction are involved. The United States Court of Claims does not have discretion to redistribute federal court jurisdiction over claims against the United States as set forth by Congress in the Tucker Act, 28 U.S.C. §§ 1346(a)(2), 1491 (1970 & Supp. V 1975). *See United States* v. *Anthony Grace & Sons, Inc.*, 384 U.S. 424 (1966).[2]

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[2] In *Grace*, as in the decision below, the Court of Claims, on grounds of efficiency and expedition (384 U.S. at 431), sought to re-arrange jurisdiction over certain types of cases (Wunderlich Act proceedings) contrary to the intent of Congress (*id.* at 427, 428). This Court, notwithstanding that the Court of Claims' decision might have been viewed as a denial of a stay of proceedings (*id.* at 428), granted certiorari to correct the error below.

2. Respondent's assertions regarding ripeness likewise are unfounded.[3] As respondent well knows, federal courts do not issue "advisory" opinions.[4] The decision below represents a final determination with respect to certain important jurisdictional matters and as such is ready for review by this Court. Respondent's suggestion[5] that the reviewability of this final determination not follow the prescribed route for review of final determinations by the Court of Claims (petition for writ of certiorari to this Court) but rather that review take place at a lower level in the federal court system (by a federal district court) with appeal therefrom to a lateral equivalent of the Court of Claims (the Court of Appeals for the Fourth Circuit) flies in the face of reason and should be dismissed without further consideration. No additional "context of specific facts" is necessary to determine the significant question of federal court jurisdiction here being raised by petitioner.[6] In fact, involvement of the federal district court and the Fourth Circuit would only serve to nullify those considerations of judicial efficiency and economy earlier alluded to by respondent,[7] not to mention a similar adverse impact on the parties. Moreover, until correction by

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[3] Respondent's Memorandum, at 9-11.

[4] *See id.* at 11.

[5] *Id.* at 9-10.

[6] *See id.* at 10. Note should be made that at no point in the opposition does respondent support or agree with the basic jurisdictional determination made by the Court of Claims. In fact, as the opinion below indicates, counsel for the United States at oral argument opposed reference of the case to federal district court. Georgia-Pacific Corp. v. United States, 568 F.2d 1316, 1319 n.3, 1321 (Ct. Cl. 1978), App. A, at A-4 n.3, A-9.

[7] *See* Respondent's Memorandum, at 9.

this Court of the errors below, the Court of Claims decision would serve to determine, erroneously, the manner in which other litigants proceed in similar circumstances.

Respectfully submitted,

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